



ARKANSAS JUDICIARY

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Rule 7. Pleadings And Motions.

(a) Pleadings Allowed. There shall be a complaint and an answer; a counterclaim; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third party answer, if a third party complaint is served. No other pleadings shall be allowed.

(b) Motions and Other Papers.

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) All motions required to be in writing and any responses and replies shall include a brief supporting statement of the factual and legal basis for the motion, response, or reply and the citations relied upon. Any supporting affidavits shall be served with the motion, response, or reply. Failure to satisfy these requirements shall be ground for the court's striking the motion, response, or reply. The court is not required to grant a motion solely because no response or brief has been filed.

(3) The rules applicable to captions, signings, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(4) The procedure for submitting a potentially dispositive motion to the circuit court for decision, both with and without a hearing, is outlined in Administrative Order Number 3(2)(B).

(c) Demurrers, Pleas, etc., Abolished. Demurrers, pleas and exceptions for insufficiency of a pleading shall not be used.

(d) Copies of Pleadings and Motions. One additional copy of all pleadings and motions shall be filed by a party or his attorney for the use of the court.

Reporter's Notes to Rule 7: - 1. This Rule serves the purpose of FRCP 7 by providing a simple and elastic pleading and motion procedure, placing minimum emphasis on form and reducing the number of pleadings allowed. *Roughley v. Penn. R. R. Co.*, 230 F.2d 387 (3rd Cir. 1956).

2. With minor exceptions Section (b) is the same as FRCP 7(b). Although the superseded Ark. Stat. Ann. 27-1103 (Repl. 1962) did not provide for pleadings other than complaint, demurrer or answer and demurrer or reply to the answer, other now superseded statutes recognized the validity of counterclaims and replies thereto as well as cross complaints. All pleadings recognized herein have been a part of Arkansas practice.

3. As in FRCP 7, Section (b) requires a reply to a counterclaim only when it is "denominated as such." No reply is required to a set-off or to a counterclaim which is not so denominated.

Thus, by failure to reply, a plaintiff does not lose the right to defend against new matters set out in the answer unless the answer, or a part of it, is denominated "counterclaim." *Gulf Refining Co. v. Fetschan*, 130 F.2d 129 (6th Cir. 1942), cert. den., 318 U.S. 764, 63 S. Ct. 666. Indeed, a reply to an answer not containing a counterclaim denominated as such should not be considered by the court. See *Carpenter v. Rohm & Hass*, 170 F.2d 146 (3d Cir. 1948) and *Kramer v. Jarvis*, 81 F. Supp. 360 (D. C. Neb. 1948).

4. FRCP 7(a) provides that the court may order a reply to an answer or a third party answer. That provision is omitted from the Rule because its theoretical necessity is questionable and its practical value is very little. A reason given for this FRCP provision is that it may enable the defendant to determine whether the plaintiff will admit to new matters raised in the answer but not denominated as a counterclaim. The same goal can be accomplished through discovery. Other reasons for the FRCP provision are stated in *Wright and Miller, Federal Practice and Procedure*, 1185 (1969), but none of them seems sufficient to justify its inclusion here. In the leading case on whether the court should, pursuant to FRCP 7(a), order a reply to an answer, the court held that such a reply should not be ordered unless there is a "clear and convincing factual showing of necessity or other extraordinary circumstances of a compelling nature," and that a reply should not be used as a substitute for discovery or inspection or for a pre-trial hearing. *Moire Color, Ltd. v. Eastman Kodak Co.*, 24 F.R.D. 325 (D.C. N.Y. 1959). Prior Arkansas law permitted no reply except in response to allegations containing a counterclaim or set-off. As noted above, no reply is required or permitted to a set-off under this Rule.

5. The purpose of Section 6(1), which is the same as FRCP 7(b)(1), is to give written notice to other parties of motions not made in the course of a hearing or trial. Oral motions made during a hearing or trial are still permitted as they are usually reduced to writing in the record of the proceedings, and they remain necessary, due to the unpredictable nature of litigation.

6. Section (b)(2) requires that matters as to form of pleadings are applicable to motions and other documents. The evident reason is to avoid the unnecessary complication resulting from different formulary rules.

7. Perhaps the most notable effect of Rule 7 is its abolition of the demurrer from Arkansas procedure. It was abolished in the FRCP and the old Federal Equity Rules and elsewhere for avoiding its sheer technicality and to permit more liberal tools for attacking the sufficiency of pleadings which accomplish the legitimate purposes of the demurrer, e.g., Rule 12(b)(6).

8. Section (d) continues the practice prescribed in superseded Rule 1(c) of the Uniform Rules for Circuit and Chancery Courts which required an additional copy of all pleadings and motions for use of the court.

Addition to Reporter's Notes, 2002 Amendment: - New paragraph (2) of subdivision (b) addresses matters that previously appeared in Rule 6(c) (supporting affidavits) and Rule 78(b) (content of motions). With these changes, Rule 6(c) governs the timing of motions, responses, and replies, while Rule 7(b) governs their content. Rule 78(b) simply cross-references these provisions. Former paragraph (2) of subdivision (b) has been redesignated as paragraph (3), and minor changes have been made in the titles of subdivision (b) and the rule.

Addition to Reporter's Notes, 2007 Amendment: New paragraph (4) of subdivision (b) references the 2007 changes in Administrative Order 3, which clarify when a matter is submitted for decision for purposes of that Order.

History Text:

History. Amended January 24, 2002

Associated Court Rules:

Rules of Civil Procedure

Group Title:

III. Pleadings and Motions

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